

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	
	)	

**COMMENTS  
OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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## SUMMARY

The Commission seeks comment on several issues in its Second Further Notice of Proposed Rulemaking. NTCA limits its comments to the issues of the definition of rural and the recovery of funds. Regarding the definition of “rural area” used for the schools and libraries universal service mechanism, the Commission should adopt a definition of “rural” that is inclusive, administratively easy, and is reasonably stable from year to year. A grandfather clause should be instituted to ensure that areas currently qualifying as rural will continue to be considered rural even if they do not qualify under the new definition. Concerning the recover of funds issue, the FCC should address pending petitions to its *Commitment Adjustment Order* before extending it to cover additional violations of E-rate policy. In addition, NTCA believes that service providers should not automatically be required to repay E-rate money in the absence of culpability.

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**COMMENTS  
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The National Telecommunications Cooperative Association (NTCA) hereby submits its comments in response to the Commission's Second Further Notice of Proposed Rulemaking concerning the schools and libraries universal service support mechanism.

NTCA is a not-for-profit association established in 1954. It represents more than 500 rate-of-return regulated rural telecommunications companies. NTCA members are full service telecommunications carriers providing local, wireless, cable, Internet, satellite and long distance services to their communities. All NTCA members are small carriers that are defined as "rural telephone companies" in the Telecommunications Act of 1996.<sup>1</sup>

In its Second FNPRM, the Commission seeks comment on several issues. NTCA's comments will be limited to the definition of rural and the recovery of funds issues.

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<sup>1</sup> 47 U.S.C. § 153(37).

## **I. DEFINITION OF RURAL**

The Commission seeks comment on an appropriate definition of a “rural area” for the schools and libraries universal service program. Under current rules, an area qualifies as rural for the schools and libraries support mechanism if it is located in a non-metropolitan county as defined by the U.S. Office of Management and Budget (OMB) or is specifically identified in the Goldsmith Modification to 1990 Census data published by the Office of Rural Health Care Policy (ORHP).<sup>2</sup> However, the FCC notes that the ORHP will no longer utilize the definition adopted by the Commission in 1997 and there will be no Goldsmith Modification to the most recent 2000 Census data.<sup>3</sup> Therefore, the Commission seeks comment on whether to adopt a new definition of rural for the schools and libraries support mechanism and what that mechanism should be.

Since schools and libraries located in rural areas generally receive discounts greater than those located in more urban areas, the definition of “rural” could have a dramatic impact on the level of funding available to schools and libraries in high-cost, sparsely populated areas.

NTCA does not favor one definition but suggests a set of principles to guide the Commission in reaching a decision. Whichever definition the FCC chooses should be: 1) administratively simple, 2) not be subject to drastic change from year to year, 3) something not completely foreign to municipalities, counties and/or school districts that will be required to apply the definition to determine if they meet the “rural” criteria, and

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<sup>2</sup> See, 47 C.F.R. §§ 54.5, 54.505(b)(3)(ii).

<sup>3</sup> See, Rural Health Care Support Mechanism, WC Docket No. 02-60, *Notice of Proposed Rulemaking*, 17 FCC Rcd 7806 (2002).

4) as inclusive as possible to ensure that the most needy schools are not further disadvantaged due to the change in definition.

Administrative simplicity is extremely important. Schools and libraries, especially those located in rural areas, often have limited resources. A definition based on data already used by schools boards, state, local and municipal governments would eliminate the need for retraining of staff and not require the relevant authority to undertake a comprehensive evaluation to determine which schools and libraries meet the definition of rural. A cumbersome and complex definition will only discourage participation and could leave the most needy of schools and libraries on roadside of the information superhighway.

In choosing a definition of “rural” the Commission should strive to pick a relatively stable standard. If the standard is erratic then schools and libraries will be forced to spend limited resources on a regular basis to determine whether they qualify as rural and therefore learn the level of support they are eligible to receive. Stable program eligibility and support levels will increase program efficiency by reducing the administrative burden on applicants and the program administrator, as well as, give applicants the ability to plan long-term.

One of the goals of the 1996 Telecom Act, which created the schools and libraries support mechanism, was to ensure that, despite income level or geographic location, children in schools could have access to advanced telecommunications services. In keeping with this goal NTCA would recommend the agency adopt a more inclusive than restrictive definition. Also, if the Commission adopts a new definition, it should

grandfather existing areas currently qualifying as rural if they would no longer qualify under the new definition.

## **II. RECOVERY OF FUNDS**

The NPRM also seeks comment on the process for the recovery of funds erroneously committed to schools and libraries. In 1999, the Commission adopted an order directing the administrator, USAC, to recover funding erroneously committed to schools and libraries in violation of the 1996 Telecom Act. The 1999 *Commitment Adjustment Order* delegated collection authority to USAC in cases where applications sought discounts for ineligible services and for telecommunications services provided by non-telecommunications carriers. The order provided that repayment would be sought from the service provider since they actually received the disbursements from the support mechanism. Now the Commission seeks comment on extending the principles of the *Commitment Adjustment Order* to programmatic violations and not just violations of statute.

USTA filed a petition for reconsideration of the Commission's determination that service providers are responsible for the repayment of funds disbursed in violation of the statutes.<sup>4</sup> USTA contended that that agency did not provide a legal basis for seeking the repayment of the funds at issue and that Commission rules prohibit the delegation of collection authority to USAC. Finally, USTA argued that seeking repayment from service providers will not solve the problem of statutory violations.

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<sup>4</sup> See, USTA Petition for Reconsideration, CC Docket Nos. 97-21, 96-45, filed November 15, 1999.

NTCA filed comments in support of USTA's petition for reconsideration in April of 2001.<sup>5</sup> NTCA agrees with USTA that the precedent for its decision is flawed. In those comments NTCA pointed out that the Supreme Court decision<sup>6</sup> and the Debt Collection Improvement Act (DCIA),<sup>7</sup> on which the FCC based its decision, both involved payments from the federal government's general Treasury funds. As NTCA said then and is still true now, the money in question is not federal funds but universal service funds that are repayable to USAC. These funds are sent directly to USAC from service providers and redistributed by USAC, a not-for-profit corporation, to service providers and redistributed ultimately to schools and libraries in the form of discounted services as part of the schools and libraries support mechanism, also known as the E-rate.<sup>8</sup> Therefore, the precedents relied upon by the FCC are inapplicable.

In the absence of evidence of service provider culpability, USAC should seek repayment of funds directly from the schools and libraries because they supplied USAC with the information used in its funding decision and they receive the ultimate benefit of the E-rate discounts. Service providers neither provide the data contained in the USAC funding application nor receive primary benefit from the universal service funds at issue.

Automatically seeking repayment of any violations from the service provider will only discourage providers from competing to provide schools and libraries with eligible services. The Commission should address the issues raised in the USTA petition before extending its repayment rules to cover additional areas.

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<sup>5</sup> See, NTCA comments, CC Docket Nos. 97-21, 96-45, filed April 2, 2001.

<sup>6</sup> *OPM v. City of Richmond*, 496 U.S. 414 (1990).

<sup>7</sup> 31 U.S.C. § 3701 *et seq.*

<sup>8</sup> 47 C.F.R. § 54.515.



### III. CONCLUSION

The Commission should adopt a definition of “rural” that is inclusive, administratively easy, and is reasonably stable from year to year. A grandfather clause should be instituted to ensure that areas currently qualifying as rural will continue to be considered rural even if they do not qualify under the new definition. In addition, the FCC should address pending petitions to its *Commitment Adjustment Order* before extending it to cover additional violations of E-rate policy. Finally, service providers should not automatically be required to repay E-rate money in the absence of culpability.

Respectfully submitted,

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March 11, 2004

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 02-6, FCC 03-323 was served on this 11th day of March 2004 by first-class, U.S. Mail, postage prepaid, to the following persons:

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